

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TWITTER, INC.,

No. C 12-1721 SI

Plaintiff,

**ORDER GRANTING IN PART  
PLAINTIFF'S MOTION TO COMPEL**

v.

SKOOTLE CORP. and JAMES KESTER,

Defendants.

Currently before the Court is Twitter's motion to compel discovery from defendants Skootle Corp. and James Kester and from two third parties. Docket No. 65. The Court has considered the arguments raised and rules as follows:

Plaintiff's Interrogatories Nos. 1-2: These interrogatories seek identification of "personal" Twitter accounts opened by Skootle's employees. Twitter argues this information is relevant to the issue of what Skootle employees knew about Twitter's Terms of Service (TOS). Twitter contends that it cannot ascertain this information on its own, despite Skootle's provision of a list of current and former employees to Twitter, because individuals opening Twitter accounts often have the same name. Defendants object to these requests, arguing that the information sought is not relevant, is personal to the individual employees and is not in Skootle or Kester's custody or control. Defendants also argue that Twitter has and can continue to seek discovery directly from Skootle's current or former employees, presumably by deposition notice or subpoena, about their personal Twitter accounts.

1 The Court finds that given this information's marginal relevance to defendants' liability,  
2 Twitter's motion to compel as to these interrogatories is DENIED without prejudice. If, as discovery  
3 continues, Twitter discovers that current or former Skootle employees used "personal" accounts in  
4 furtherance of the allegations made in the complaint, it can again move to compel production of this  
5 information.

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7 Plaintiff's Requests for Production 14/15 to Skootle and 15/16 to Kester: These requests ask  
8 defendants to produce documents regarding defendants' revenue and income from Skootle and Skootle's  
9 TweetAdder program, including financial statements and tax records. Defendants object to these  
10 requests, arguing that their financial information is not relevant to the causes of action alleged. The  
11 Court notes that the information sought is directly relevant to the issue of punitive damages under the  
12 alleged tortious interference and fraud causes of action. As such, plaintiff's motion to compel as to  
13 these requests for production is GRANTED.

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15 Plaintiff's Document Subpoenas to Third Parties: Plaintiff asks the Court to compel third-parties  
16 Troy Fales and Amanda Kester – who are represented by defense counsel – to produce documents. With  
17 respect to Mr. Fales, Twitter has requested documents showing the amounts Fales has been paid for his  
18 work on TweetAdder, allowing for redactions of personal information and of income on work or  
19 services not related to TweetAdder (Request No. 3). Plaintiff contends these documents will show that  
20 defendants knew about and condoned Mr. Fales' conduct, and will help establish Mr. Fales' status as  
21 an agent of Skootle and his bias as a witness. Defense counsel object on Mr. Fales' behalf, arguing that  
22 the information sought impermissibly violates Mr. Fales' rights of privacy as he is not a defendant. The  
23 Court GRANTS Twitter's motion to compel production of documents responsive to Request No. 3,  
24 redacted as identified above.

25 The document subpoenas also seek all communications relating to Twitter, Skootle or  
26 TweetAdder (Request Nos. 11, 12, 14). Defense counsel object on behalf of Mr. Fales and Ms. Kester  
27 on over-breadth grounds, arguing that the requests as phrased would cover any document mentioning  
28 Twitter and include, for example, emails with a signature identifying a Twitter account. The Court

1 GRANTS Twitter's motion to compel with respect to Request Nos. 11, 12 and 14 but defines "relating  
2 to" as "concerning, describing or discussing."

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4 **IT IS SO ORDERED.**

5 Dated: November 7, 2012

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SUSAN ILLSTON  
9 United States District Judge  
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